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January 28, 2010

The Honorable James Orenstein
United States Magistrate Judge
United States Federal Courthouse
225 Cadman Plaza East
Room 456 North
Brooklyn, New York 11201

Via ECF

Re: ***In re Payment Card Interchange Fee and Merchant
Discount Antitrust Litigation - MDL No. 1720***

Dear Judge Orenstein:

The Individual Plaintiffs request permission to file under seal portions of the letter to the Court from William Blechman dated January 28, 2010. The letter discusses information that has been designated Highly Confidential under the Protective Order in MDL 1720. Enclosed with this letter is a public version of the letter to the Court with the Highly Confidential Information redacted. We have served counsel for Visa and MasterCard with an unredacted copy of the letter.

Respectfully,

William J. Blechman

WJB:mb

CC: Counsel of Record (via ECF)

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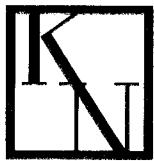
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**In re Payment Card Interchange Fee
And Merchant Discount Antitrust Litigation**

Case File No. 05-md-1720

An unredacted version of the letter dated January 28, 2010, from William J. Blechman to the Honorable James Orenstein is FILED UNDER SEAL.

Portions of the letter are sealed pursuant to order of the Court and contains Highly Confidential Information filed in this case by Plaintiffs and is not be opened or the contents thereof to be displayed or revealed except by order of the Court.



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January 28, 2010

FILED UNDER SEAL

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United States Magistrate Judge
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Via ECF

Re: ***In re Payment Card Interchange Fee and Merchant
Discount Antitrust Litigation - MDL No. 1720***

Dear Judge Orenstein:

The Individual Plaintiffs request leave to submit this letter to respond briefly to Visa's January 26th letter and to advance this Court's consideration of the pending motion to compel the production of the European Commission's ("EC") Statement of Objections ("SO") (the "Motion"). We believe that we are uniquely positioned to submit this response because of the central role of the Merchant Restraints in the Individual Plaintiffs' cases.¹

Visa opposes the Motion in part on relevancy grounds, arguing that the SO involves Europe and "[t]his case involves U.S. commerce." This case does not just "involve[] U.S. commerce." The existence, scope and consequences of Visa's and MasterCard's anti-steering rules (such as the no surcharge rule) and other restraints in Europe (and elsewhere) are probative of issues in this case. Indeed, Plaintiffs and Defendants have already exchanged expert reports that analyze and discuss the Networks' merchant restraints in Europe and elsewhere and the competitive impact that followed from the removal of those restraints. More specifically, in Europe (and elsewhere) the Networks have eliminated or modified certain of their anti-steering rules. As a result, merchants have begun steering cardholders to lower cost forms of payment by surcharging, or using their ability to steer to unleash competition for merchant acceptance thus incenting the Networks and Banks to negotiate interchange rates lower than they otherwise would have charged. In Europe,

¹ We otherwise join in the Class Plaintiffs' motion.

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Honorable James Orenstein

January 28, 2010

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MasterCard [REDACTED]² eliminated its no surcharge rule and [REDACTED]

Goosse (MasterCard) 30(b)(6) Dep. Ex. 34024 and Tr. at 291 (

[REDACTED]).³

The Networks' anti-steering rules in Europe are within the scope of the EC's investigation,⁴ and the EC's analysis of the subject – preliminary or otherwise and in our experience typically detailed and annotated in an SO – will advance the thinking on the subject of the restraints and likely identify relevant documents and data which both sides may not even have at present because Visa (US) and MasterCard (US) maintain that they cannot require their European affiliates to share information with them. (The Court may recall earlier motion practice on this very subject.) Alternatively, if Visa or MasterCard or their counsel in the U.S. have the SO, then production of the document to the Class and Individual Plaintiffs' counsel corrects that imbalance and advances their prosecution of these antitrust cases as private attorneys general.

Respectfully,



William J. Blechman
For the Individual Plaintiffs

WJB:mb

cc: Counsel of Record (via ECF)

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² Goosse (MasterCard) 30b6 Tr. at 292.

³ Government enforcement actions required the Networks to remove certain anti-steering rules in Australia and New Zealand.

⁴ See European Commission press release dated April 6, 2009 announcing Statement of Objections to Visa, *available at* <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/151&format=HTML&aged=0&language=EN&guiLanguage=en> ("The Statement of Objections also concerns other system rules and practices such as the "honour all cards rule", "no surcharge rule" and blending of merchants fees, in their capacity of hindering merchants' ability to manage their payment costs and thereby increasing the restrictive effects of the MIFs [interchange rates].").